

mode of compelling sheriffs to make return of executions; and as to their being entered not called by consent; 1794, ch. 54; 1789, ch. 42; 1802, ch. 109; and it has had extended to it the same facilities of transmitting its process to the sheriffs of distant counties, and of enforcing a return, that had been given to the Courts of common law. 1817, ch. 139; 1819, ch. 144, s. 3.

It is clear, that commissioners, acting under a commission from this Court, directing them to take evidence, have authority to issue a summons to call a witness before them; and if the witness should fail or refuse to attend and to testify, it is equally clear, that he may be forced to do so, or be punished by this Court. The process, by which the witness is called before the commissioners, is a subpoena; and whether it issues direct from this Court itself, or from its commissioners, it is a process alike legal; and one to which obedience may be enforced. For, the Legislature having expressly recognized the right of the commissioners to summon witnesses before them, it necessarily follows, that the Court must have the power of enforcing their attendance there. 1785, ch. 72, s. 16; *Maccubbin v. Matthews*, 2 Bland, 252; *Bryson v. Petty*, 1 Bland, 182, note; *Anonymous*, 14 Ves. 450. The public good as well as the immediate interests of the parties requires, that, in cases of contumacy to the law, obedience should be enforced with as little delay and expense as possible. If such a subpoena were to issue direct from this Court, there is no doubt that it might and ought to be executed by the sheriff if required; and I know of no law or reason why such process should not be executed by him when issued by the commissioners, who, in that respect, act as a part of the Court itself. *Cooth v. Jackson*, 6 Ves. 30; *Forum Rom.* 117; *Bryson v. Petty*, 1 Bland, 182, note. The sheriff being a public sworn officer, his return to all process is conclusive until the contrary is shewn; and besides, as he is charged with the execution of many similar duties over his county, such summons may, in most instances, be more readily and economically served by him than by any indifferent person.

I am therefore of opinion, that it was the right and duty of the sheriff to serve the summons issued by the commissioners in this case. And as a clear and necessary consequence of its being his duty to execute such process, it follows, that he is entitled to the *fees allowed by law for the performance of such service; and the register must be directed to tax such fees in the bill of costs accordingly. **440**

But in this case the sheriff has made out his account in so loose and indefinite a manner, that the amount, as now claimed, cannot be allowed. The process itself, with the sheriff's return endorsed, or a certificate by the commissioners of the service having been performed by the sheriff, should have been returned with the commission; or in place of it some unequivocal evidence must be pro-